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OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

July 23, 1975

LEGISLATIVE REFERRAL MEMORANDUM

To: Legislative Liaison Officer

Dept. of Agriculture	Energy Research and Development Admin
Dept. of Commerce	Federal Energy Administration
Dept. of Defense	Federal Trade Commission
Dept. of Health, Education, and Welfare	General Services Administration
Dept. of Housing and Urban Development	National Aeronautics and Space Admin.
Dept. of the Interior	Postal Service
Dept. of Labor	Railroad Retirement Board
Dept. of State	Tennessee Valley Authority
Dept. of Transportation	U.S. Information Agency
Dept. of the Treasury	Veterans Administration
ACTION	General Accounting Office
Agency for International Development	Administrative Office of the U.S. Courts
Central Intelligence Agency ✓	Domestic Council Committee on the Right of Privacy
Civil Service Commission	Environmental Protection Agency

Subject: Justice draft bill "To revise the statute authorizing the garnishment of payments of remuneration for employment for the purpose of complying with certain child support and alimony payment orders"

Separate list of "Payments Possibly Subject to Section 459"
(We would like your views on coverage of items included on this list under Section 459 and on items which should be added for the Congress' consideration)

The Office of Management and Budget would appreciate receiving the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Special circumstances require priority treatment and accordingly your views are requested by Thursday, August 7, 1975.

Questions should be referred to Bill Nichols (395-4550), Eileen Friars (395-5611, or Jeffrey Weinberg (395-4860), the legislative analyst in this Office.

Naomi R. Sweeney
Naomi R. Sweeney, for
Assistant Director for
Legislative Reference

Enclosures

A. "Traditional" Remuneration for Federal Employment

1. current salary payments (civilian and military)
2. normal and disability retirement benefits (civilian and military)
3. severance pay
4. bonuses (as for production worker performance)

B. Other Federal Employment-Related Payments

1. veterans benefit payments (construed as a benefit for previous government service)
2. unemployment compensation to former Federal employees and ex-servicemen
3. FECA disability payments
4. ACTION volunteer allowances and stipends (Peace Corps, VISTA, Foster Grandparents, etc.)
5. Job Corps stipends
6. Federal income tax refunds of Federal employees

C. Private Employment-Related Federal Payments

1. Social Security benefits (cash and medicare)
2. Railroad retirement benefits
3. Longshoremen's and harbor workers' disability benefits
4. Black lung compensation payments
5. unemployment compensation for private sector employees paid from general revenues



Office of the Attorney General
Washington, D. C.

NOT SENT TO CONGRESS

The Vice President
United States Senate
Washington, D. C. 20510

Dear Mr. Vice President:

Enclosed for your consideration and appropriate reference is a legislative proposal "To revise the statute authorizing the garnishment of payments of remuneration for employment for the purpose of complying with certain child support and alimony payment orders."

On January 4, 1975, the President signed into law P.L. 93-647, the Social Services Amendments of 1974, subsection 101(a) of which added a new section 459 to the Social Security Act which provides that wages due Federal employees, including military personnel, are subject to garnishment in support and alimony cases. However, the statute does nothing more; it provides no authority for implementing regulations; it makes no provision for serving the United States with legal process: it fails to address the problem of time delay resulting from computerized payrolls; it does not describe the nature of legal process which may be served upon the Government nor the specific type of Government obligation which may be garnished.

Since section 459 became effective on January 1, 1975, the Department of Justice has been inundated with complaints from beneficiaries of support and alimony orders, their counsel, and agencies of the Government - all of which are uncertain of how to proceed under the present section 459. In order to clarify and to implement the intent of Congress to authorize the garnishment of Government wages in support and alimony cases, the Department of Justice recommends the enactment of the attached draft of a revised section 459.

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Subsection (a) waives the Government's immunity from suit for garnishment of certain child support and alimony payments. Subsection (b) would authorize the issuance of regulations to implement the statute. We contemplate that there would be full consultation among Departments of Defense and Justice and Civil Service Commission representatives in the development of appropriate regulations and that the Chairman of the Civil Service Commission would make any authorized delegation of authority to issue regulations on such terms and conditions as would assure reasonable consistency of such regulations within the Executive Branch.

Many private practitioners have been in a quandry as to how to effect service of process in order that their clients may obtain the benefit of the garnishment statute. Subsection (c) of the attached draft removes this uncertainty and permits inexpensive and expedited service by registered or certified mail return receipt requested or by personal service if this is preferred. Government agencies would designate agents for service of process and publish their designations and the data required to identify the individuals affected and their accounts. All such designations and data requirements would be published at a single point in title 5 of the Code of Federal Regulations so that it would be conveniently compiled and easy for the private practitioner to locate. Service on the individual affected is also required, when possible, in order to provide the United States and its agents and employees effecting payment with a good acquittance on payment and to avoid possible dual liability. Of course, personnel in the military service would continue to receive the protection of the Soldiers' and Sailors' Civil Relief Act.

Subsection (d) of the attached draft revision specifically authorizes appropriate responses to interrogatories by the agency served. This will further facilitate payment under the statute and allay concerns of employees of Government agencies who will execute the garnishment orders.

The Federal Government is so large and its activities and branches are so numerous that a reasonable time for response is required to permit identification of the

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proper account, ascertainment of the sufficiency of process, and consultation with counsel. The thirty-day period provided in subsection (e) of the attached draft is a minimum figure though the time for response may be extended by failure of the petitioner to furnish proof of service on the individual affected or justify her failure to effect service on that person.

Subsection (f) deals with a serious problem that has been encountered by the affected agencies. Generally disbursements of regular periodic payments of remuneration for employment are computerized. However, process served upon an agency may unreasonably require that a pay check of a certain date be held up when in fact such process was not received in time to permit the reprogramming of the computer run affecting that particular check. In other instances a writ may call for deductions which are more frequent than the times the individual is actually paid. To avoid very substantial additional costs to the Government and serious inconvenience or hardship to thousands of others affected by the computerized payrolls, subsection (f) would permit deductions as these can be properly programmed and on the regular agency payment cycle.

Subsection (g) eliminates any doubt as to which State law should be applied in determining relevant deductions and exemptions. In some jurisdictions deductions and exemptions otherwise provided by State law are lost unless an affirmative claim of entitlement thereto is asserted. Many personnel serving overseas or at remote sites will be unable to assert their entitlement to deductions and exemptions otherwise authorized by State law. Subsection (g) would provide such an individual, who is not served pursuant to subsection (c), with the minimum protection of reserving 50% of the person's net salary from withholding under this statute.

Subsection (h) validates payments made pursuant to process which is regular on its face and, in the circumstance described, protects the Government from dual liability and its employees handling such matters from risk of suits seeking to impose personal liability upon them.

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Subsection (i) provides a needed mechanism to resolve the inevitable disputes which arise when two or more parties seek to attach the same payments when legal process issues from more than one source.

Definitions are included in subsection (j) to explain the meaning of terms used in the existing statute and reused in the proposed revision. The definition of "agency" spells out the broad coverage of the statute. The term "alimony" is defined to include spousal support in keeping with the increasing State use of "support" terminology instead of "alimony." Cf. Sec. 4801 of the Civil Code of Calif. Uncertainty whether agencies can pay court-ordered attorneys' fees and court costs is removed by the definition of "child support" and "alimony."

Representatives of various agencies have been uncertain as to the meaning of the term "legal process." A small number of states have provided by statute for what amounts to a garnishment or order to withhold and deliver issuing from an administrative agency. Such process would be honored solely as a garnishment and solely for the amount payable under the revision attached, provided personal service is made on the individual affected so that the Government may be sure of a good acquittance if it makes payment. Absent such personal notice, procedural due process would not appear to be satisfied.

The term "remuneration for employment" is defined as we believe the Congress intended in the initial enactment of section 459. If we have misread that intent, the Congress can further clarify the meaning of that term for the guidance of the agencies and individuals affected. The definition included in subsection (j)(4) covers such items as current salary, military pay, or wage payments of officers and employees of the Federal Government, severance pay, bonuses for worker performance or productivity, stipends paid for services performed for certain volunteer agencies and, of course, the annuities received under retirement systems administered by the Federal Government. Our reading of the statute, based on our understanding of Congressional intent, would exclude such items as payments to independent contractors, unemployment compensation for former Federal employees and former service personnel, unemployment compensation for certain private sector employees paid from general

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Federal revenues, benefits payable on account of work-related injuries or occupational diseases such as those payable under the Federal Employees Compensation Act, the Longshoremen's and Harbor Workers' Compensation Act, black lung compensation payments, disability compensation payable to veterans, and disability retirement benefits. Also excluded would be purely gratuitous payments such as veterans' pension benefits and non-contributory Social Security benefit payments, as well as jury fees, Federal income tax refunds and tax rebates.

I recommend the introduction and prompt enactment of this proposed revision. The changes which would be made by the proposed revision should result in some net savings to the Government though the amount thereof cannot readily be estimated.

The Office of Management and Budget has advised that there is no objection to the submission of this legislative proposal from the standpoint of the Administration's program.

Sincerely,

The Attorney General

Enclosure

..... CONGRESS
 SESSION

S.

(Note: Fill in all blank lines except those provided for the date and number of bill.)

IN THE SENATE OF THE UNITED STATES

Mr.

introduced the following bill; which was read twice and referred to the Committee on

A BILL

To revise the statute authorizing the garnishment of payments of remuneration for employment for the purpose of complying with certain child support and alimony payment orders

(Insert title of bill here)

- 1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled, that*

Section 459 of the Social Security Act (42 U.S.C. 659)
 is amended to read as follows:

§ 459(a). Notwithstanding any other provision of law, moneys the entitlement to which is based upon remuneration for employment due from, or payable by, the United States of America or an agency thereof to any individual (except judges appointed pursuant to Article III of the Constitution) shall be subject to legal process brought for the enforcement, against such individual, of his legal obligation to provide child support or make alimony payments as if the United States were a private person.

(b) Regulations not inconsistent with this section shall be promulgated to implement this section and to facilitate compliance with legal process for the payment of child support and alimony. The

----- CONGRESS
----- SESSION

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Civil Service Commission pursuant to this section (1) his designation of an agency or agents for service of process by title of position, address and telephone number, and (2) the data required to permit prompt identification of the individual and his account. If an individual is receiving remuneration for employment from more than one agency, separate process shall be served on each agency. A copy of the legal process served upon an agency shall be served by one of the methods provided herein upon the individual whose remuneration for employment is sought to be reached in sufficient time for the individual to challenge such action with the appropriate court or administrative authority, if he wishes to do so. Proof of such service or of the reason such service could not be effected on the individual concerned will be served upon the agency affected and the agency may delay its response to legal process until such proof is served on it.

(d) An agency head may respond to relevant interrogatories, if authorized by the law of the state in which the legal process will issue, prior to formal issuance of legal process, upon a showing of the applicant's entitlement to child support or alimony payments from the individual identified as provided in subsection (c). No agency employee whose duties include responding to such interrogatories shall suffer civil or criminal liability or disciplinary action under the Privacy Act of 1974 (Public Law 93-579) or any other law by reason of such disclosure.

(e) Agency heads shall have at least thirty days from the effective date of service within which to respond to interrogatories or to legal process seeking the payment of child support or alimony obligations from remuneration for employment.

(f) Agencies shall not be required to vary their normal pay and disbursement cycles to comply with legal process for the payment of child support and alimony obligations.

(g) An individual whose remuneration for employment is subject to legal process for the payment of child support or alimony pursuant to this section shall be entitled to the deductions and exemptions authorized by the law of the state in which the order for the payment of child support or alimony is initially entered. If such an individual is not served with process as required by subsection (c) hereof, not more than fifty percent of his net remuneration for employment payable by the agency may be withheld to honor legal process. For the purpose of determining net remuneration for employment there shall be deducted from the gross remuneration for employment due for a particular normally observed payment period, if actually deducted, (1) proper State, Federal and local income tax withholdings for the individual counting the correct number of dependents, (2) health insurance premiums, (3) normal retirement deductions without supplementary coverage, and (4) life insurance premiums normally deducted for the salary or pay level involved without supplementary coverage.

(h) Payments pursuant to legal process regular on its face, after receipt of proof that the individual concerned was also served as provided in subsection (c) hereof, shall be valid dispositions of remuneration for employment if the individual does not successfully challenge such legal process, and the United States, the agency and the persons making and authorizing such payments shall not be liable for having made such payments or be required to make duplicate payments.

(i) In the event an agency is served with legal process, from more than one court or source, seeking to reach the remuneration for employment of an individual, such proceedings may be removed or transferred of right to any appropriate single United States district court. Removal or transfer shall be accomplished in accordance with chapter 89 of title 28 of the United States Code and 28 U.S.C. 1404, insofar as these statutes may be appropriate and are not inconsistent with this section, and the proceedings shall continue as consolidated proceedings. Administrative proceedings referred to in subsection (j) (3) shall be subject to removal pursuant to this subsection in the same manner as court proceedings. The district court shall have authority to allocate payments of remuneration of pay or determine priorities of payment as may be appropriate in the circumstances.

(j) The following definitions shall govern the application of this section.

(1) The term "agency" includes all departments, administrations, and instrumentalities in the Executive Branch of the United States of whatsoever kind, all independent establishments of the United States, including the Postal Service, and all administrations, authorities, boards, commissions, councils, services and instrumentalities of the Federal Government of whatsoever kind, all wholly-owned Federal corporations, the Congress of the United States including the General Accounting Office, the Library of Congress, the Government Printing Office and the Botanic Garden, and the Federal courts including the Administrative Office of United States Courts and the Federal Judicial Center.

(2) The word "alimony" shall include spousal support no matter how denominated that arises out of any decree, order or judgment providing spousal or child support. The words "child support" and "alimony" may include court-ordered attorneys' fees and court costs ordered by a court of competent jurisdiction.

(3) The term "legal process" means an order, writ, summons or other similar process issued from a court of competent jurisdiction within the United States, in the nature of or in connection with garnishment, attachment, or involuntary assignment, against the United States of America to obtain the remuneration for employment payable to an individual, when the purpose of such garnishment, attachment, or assignment is the satisfaction of a court-ordered child support or alimony obligation. The term "legal process" may include an order or garnishment-type process issued by State or local administrative authority when specifically authorized by State statute and such procedure is applicable alike to private employers. Such process shall not be considered "legal process" and will not be honored if the individual, whose remuneration for employment is sought to be reached, is not served with a copy of the process served on the agency in accordance with subsection (c).

(4) The term "remuneration for employment" means compensation payable for personal services performed by an individual denominated as wages, salary or pay, and includes periodic payment of military retired pay and annuities under contributory retirement systems including benefits payable under title II of the Social Security Act, entitlement to which is

to reimburse or defray expenses incurred by individuals in executing duties associated with their employment by the United States or any agency thereof are not included within the meaning of the term "remuneration for employment". The term "remuneration for employment" does not include gratuitous benefit payments, compensation or benefits payable for injury or illness, or unemployment compensation benefits.